

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**CHRISTOPHER VILLELLA,**  
**Plaintiff**

**V.**

**CITY OF HARKER HEIGHTS,**  
**TEXAS, Defendant**

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**CIVIL ACTION NO. 6:14-CV-409-WSS**

**NOTICE OF REMOVAL**

TO THE HONORABLE WALTER S. SMITH, JR.:

COMES NOW, the City of Harker Heights, Defendant in the above-entitled and numbered cause, and makes and files this Notice of Removal of the above-styled cause from state court to this Court and in support thereof would respectfully show the court as follows:

**I.**

This action was commenced by way of Plaintiff's Original Petition, filed with the District Court for the 146th Judicial District, Bell County, Texas, in Cause No. 272,743-B on September 15, 2014. True and correct copies of all process, pleadings, and orders served upon the Defendant are attached hereto as Exhibit 1 (Plaintiff's Original Petition) and Exhibit 2 (Citation), as required by 28 U.S.C. §1446(a).

**II.**

The Defendant first received a copy of Plaintiff's Original Petition on September 18, 2014. Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b) within thirty days of receipt of the initial pleading setting forth the claim for relief.

**III.**

Removal is sought based on federal question jurisdiction. Plaintiff has sued under the Fair Labor Standards Act (29 U.S.C. § 201 et. Seq.). The above described action is one in which this Court has subject matter jurisdiction under the provisions of 28 U.S.C. §§ 1331, 1337 and 29 U.S.C. § 216, and is one which may be removed to this Court by the Defendant pursuant to the provisions of 28 U.S.C. § 1441 (a). *See also Bruer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003) (an action under the Fair Labor Standards Act may be removed to federal court). This Court has pendant jurisdiction over Plaintiff's non-FLSA claims.

**IV.**

Pursuant to 28 U.S.C. § 1446(d) the Defendant will provide the adverse party written notice of the filing of this Notice of Removal and will file a copy of this Notice of Removal with the Clerk of the District Court of Bell County, where the action is currently pending.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this action be removed and filed among the causes of the United States District Court for the Western District of Texas, Waco Division.

Respectfully submitted,

**HALEY & OLSON, P.C.**

510 North Valley Mills Drive, Suite 600

Waco, Texas 76710

Telephone: (254) 776-3336

Telecopier: (254) 776-6823

By: /s/ Charles D. Olson

CHARLES D. OLSON

State Bar No. 15273200

MICHAEL W. DIXON

State Bar No. 05912100

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on the 14th day of October, 2014, to the following counsel of record in accordance with the Texas Rules of Civil Procedure:

Matt Bachop  
DEATS DURST OWEN & LEVY PLLC  
1204 San Antonio St., Suite 203  
Austin, TX 78701  
Email: [mbachop@ddollaw.com](mailto:mbachop@ddollaw.com)

/s/ Charles D. Olson  
CHARLES D. OLSON

NO. 272,743-B

CHRISTOPHER VILLELLA,

Plaintiff,

v.

CITY OF HARKER HEIGHTS, TEXAS,

Defendant.

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IN THE DISTRICT COURT OF

BELL COUNTY

146TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THE COURT:

Comes now Plaintiff, Christopher Villella, by and through his attorney of record, and complains of the City of Harker Heights, Texas. In support of his complaint, Plaintiff states the following:

**I. DISCOVERY LEVEL**

Plaintiff intends that discovery in this case be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 190.3.

**II. REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

**III. PARTIES**

Plaintiff Christopher Villella is an individual and Texas resident who was employed by Defendant at all times relevant to this suit. Plaintiff was an "employee" of Defendant as that term is defined in 29 U.S.C. § 203(e).

Defendant City of Harker Heights, Texas, is a municipal corporation operating within its geographical boundaries in Bell County, Texas. Defendant is a “public agency” as defined by 29 U.S.C. § 203(x) and an “employer” as defined in 29 U.S.C. § 203(d). Defendant may be served with process by serving its Mayor, Rob Robinson, at 921 Cottonmouth Drive, Harker Heights, Bell County, Texas 76548, or wherever he may be found.

#### **IV. JURISDICTION AND VENUE**

The Court has jurisdiction over the case pursuant to TEX. CONST. art. V, § 8; TEX. GOV'T CODE §§ 24.007–24.008; and 29 U.S.C. § 216. Venue is proper in this Court pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002.

#### **V. FACTUAL ALLEGATIONS**

Defendant is subject to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201–219. During the time period relevant to this suit, Plaintiff was an “employee” of Defendant as that term is defined in 29 U.S.C. § 203(e). Plaintiff worked as a police officer in the canine unit of the Harker Heights Police Department. During the time period relevant to this suit, Defendant was an “employer” as defined in 29 U.S.C. § 203(d).

While employed by Defendant, Plaintiff was required to regularly work off-duty providing care for the canine assigned to him, including feeding, grooming, exercising, socializing, toileting, and medical care, among other tasks. This off-duty work regularly caused Plaintiff to work hours in excess of 40 per week for Defendant. Throughout Plaintiff's employment with Defendant, Defendant refused to pay, and continues to refuse to pay, Plaintiff compensation for time spent working off-duty providing care to the canine assigned to Plaintiff by Defendant. This includes a refusal on Defendant's part to pay Plaintiff at one and one-half his regular rate of pay for hours worked in excess of 40 each week.

## **VI. FIRST CAUSE OF ACTION**

By requiring Plaintiff to work off-duty providing care for the canine assigned to Plaintiff by Defendant without compensating Plaintiff at his regular or overtime rate for those hours, Defendant violated Plaintiff's rights under the FLSA, including but not limited to 29 U.S.C. §§ 206–207 and 29 C.F.R. §§ 785.6–785.7. Defendant's FLSA violations were willful, thus entitling Plaintiff to the three-year statute of limitations under 29 U.S.C. § 255(a).

## **VII. SECOND CAUSE OF ACTION**

By requiring Plaintiff to work off-duty providing care for the canine assigned to Plaintiff by Defendant without compensating Plaintiff at his regular or overtime rate for those hours, Defendant violated Plaintiff's rights under TEX. LOC. GOV'T CODE § 142.0015(h) to be paid for overtime hours at the rate of "1-1/2 times the compensation paid to the officer for regular hours."

## **VIII. PRAYER FOR RELIEF**

Wherefore, premises considered, Plaintiff respectfully requests that Defendant be cited to appear and answer herein, and upon hearing, that the Court award Plaintiff the following relief:

- A. Declare that Defendant has violated the Fair Labor Standards Act, specifically 29 U.S.C. §§ 206–207, and TEX. LOC. GOV'T CODE § 142.0015(h) by failing to compensate Plaintiff at the appropriate regular or overtime rate for the time spent working off-duty providing care to the canine assigned to Plaintiff by Defendant.
- B. Declare that Defendant's Fair Labor Standards Act violations were willful.
- C. Order Defendant to pay Plaintiff back pay at his regular or overtime rate, as appropriate, for each uncompensated hour spent working off-duty providing care for the canine assigned to Plaintiff by Defendant.
- D. Order Defendant to pay Plaintiff liquidated damages in an amount equal to the

back pay awarded to Plaintiff.

E. Order Defendant to pay Plaintiff's reasonable attorney fees and costs pursuant to 29 U.S.C. § 216(b).

F. Order Defendant to pay pre-judgment interest at the highest lawful rate for all amounts awarded against Defendant for which pre-judgment interest is legally available.

G. Order Defendant to pay post-judgment interest at the highest lawful rate for all amounts, including attorney fees, awarded against Defendant.

H. Order such other relief, whether legal or equitable, to which Plaintiff is entitled.

Respectfully submitted,

DEATS DURST OWEN & LEVY, PLLC

/s/ Matt Bachop

Matt Bachop  
TBN: 24055127  
mbachop@ddollaw.com  
1204 San Antonio St., Suite 203  
Austin, Texas 78701  
(512) 474-6200  
FAX (512) 474-7896

Attorney for Plaintiff

CERTIFIED COPY:  
 DOCUMENT ATTACHED IS A  
 TRUE & CORRECT COPY  
 OF THE ORIGINAL ON FILE

OCT 14 2014



STELLA F. NORMAN  
8101 HOLLYBRIER CO., TX  
BY: [Signature] BEAUTY





Server Constable

# THE STATE OF TEXAS

## CITATION

Cause No. 272743 - 0

ORIGINAL

To  
CITY OF HARKER HEIGHTS TEXAS  
MAYOR ROB ROBINSON  
921 COTTONMOUTH DR  
HARKER HEIGHTS, TEXAS 76548

**Defendant**, in the hereinafter styled and numbered cause:

You are hereby commanded to appear by filing a written answer to the **PLAINTIFF'S ORIGINAL PETITION** at or before 10:00 a.m. on the first Monday following the expiration of twenty (20) days from the date of service hereof, with the clerk of the **146TH DISTRICT COURT**, Bell County, Texas, to be held at the Bell County Justice Complex Building, District Courts in Belton, Texas, a copy of which accompanies this citation, in the cause number **272743 - 0**, styled

**CHRISTOPHER VILLELLA**  
**VS**  
**CITY OF HARKER HEIGHTS TEXAS**

filed in said court on September 15, 2014.


This was issued at the request of attorney: MATT BACHOP, 1204 SAN ANTONIO ST SUITE 203 AUSTIN, TEXAS 78701.

**NOTICE TO Defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 AM on the first Monday following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you.**

Witness, Shelia Norman, District Clerk of Bell County, Texas.

Issued and given under my hand and seal of said Court at office in Belton, Texas, on September 16, 2014.

Shelia Norman, District Clerk  
Bell County, Texas  
1201 West Huey Road  
P.O. Box 909  
Belton, Texas 76513

By:  Deputy Clerk  
DUNIVESA

2014 SEP 19 A 9:49

FILED

RECEIVED

SEP 17 '14 AM 10:05  
CONSTABLE PRECINCT 4  
BELL COUNTY, TEXAS

**CITATION RETURN OF SERVICE**

Cause No. 272743 - 0

CHRISTOPHER VILLELLA  
VS  
CITY OF HARKER HEIGHTS TEXAS

IN THE  
146TH DISTRICT COURT  
BELL COUNTY, TEXAS

**ADDRESS FOR SERVICE:**  
CITY OF HARKER HEIGHTS TEXAS  
MAYOR ROB ROBINSON  
921 COTTONMOUTH DR  
HARKER HEIGHTS, TEXAS 76548

**OFFICER'S RETURN**

Came to hand on the 17 day of September, 2014, at 1005 o'clock A.m., and executed in Bell County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the **PLAINTIFF'S ORIGINAL PETITION** at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
Rob Robinson	9-18-14 1:13pm	921 Cottonmouth Harker Heights

And not executed as to the defendant(s), \_\_\_\_\_

The diligence used in finding said defendant(s) being:

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant(s) being:

**FEES:**

Serving Petition and Copy \$ \_\_\_\_\_  
Total \$ 70 -

Constable Edd Metton III - Officer  
Bell, County, Texas  
By: Dominguez, Deputy  
\_\_\_\_\_  
Affiant

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with TRCP Rule 107; the officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_  
(First, Middle, Last)  
\_\_\_\_\_  
(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(Id # & expiration of certification)

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE & CORRECT COPY  
OF THE ORIGINAL ON FILE

OCT 14 2014



SHARLINE NORMAN  
COUNTY CLERK  
OKLAHOMA COUNTY